IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

Bail Appl..No. 3716 of 2007()

CRIME NO. 281/07 OF HOSDURG POLICE STATION

PETITIONERS/ACCUSED

---

1. M.P.AMEER, S/O.MAMMUNHI, AGED 25 YEARS,
   BELA KADAPURAM, POST KANHANGAD.

2. NIYAS, S/O.RAZAK, AGED 22 YEARS,
   BELA KADAPURAM, POST KANHANGAD.

3. JABIR, S/O.HUSSAINAR, AGED 20 YEARS,
   R/AT BELA KADAPURAM, P.O.KANHANGAD.

4. SAMAD, S/O.MOHAMMED KUNHI, AGED 19
   YEARS, R/AT BELA KADAPPURAM, KANHANGAD P.O.

5. AYOOB, S/O.MOOSA, AGED 23 YEARS,
   R/AT BELA KADAPURAM, KANHANGAD P.O.

6. NAWAS, S/O.M.P.MOIDU, AGED 18 YEARS,
   R/AT BELA KADAPPURAM, P.O.KANHANGAD.

7. SHABEER, S/O.BASHEER, AGED 19 YEARS,
   R/AT BELA KADAPPURAM, KANHANGAD.

8. RASHI, S/O.MOHAMMED KUNHI, AGED 20
   YEARS, R/AT BELA KADAPPURAM, P.O.KANHANGAD.

BY ADV. SRI.M.VIJAYAKUMAR

RESPONDENTS: COMPLAINANT & STATE

---

1. STATE OF KERALA,
   REP. BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

2. STATION HOUSE OFFICER, KANHANGAD
   POLICE STATION.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 3716 of 2007

- -

Dated this the 25th day of June, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 to 8. They face allegations, inter alia, under Section 326 r/w. 149 I.P.C. The crux of the allegations against them is that on account of political animosity, the accused persons indulged in the alleged offence. Investigation is in progress. All the eight accused persons are named in the F.I.R. The petitioners, who claim to be students, apprehend that they may be arrested at any moment. The learned counsel for the petitioners contends that the injuries suffered do not fall within the sweep of grievous hurt under Section 320 I.P.C. and the said allegation is raised with vexatious intent.

2. The learned Prosecutor opposes the application. As directed by this court, the learned Prosecutor called for and produced before me the case diary. The Prosecutor points out that the wound certificate shows that the victim had suffered compound fracture. The contention that the allegations do not constitute an offence under Section 326 I.P.C. cannot, in these circumstances, be accepted.

3. I find no reason to justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioners. This I am satisfied is a fit case where the petitioners must resort to the ordinary and regular procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek bail in the ordinary course.

4. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the Investigating Officer or the learned Magistrate and apply for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

tm